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Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 911

Case No. 1007: SHARSHARA

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Julio Barboza; Mr. Victor Yenyi Olungu;

Whereas, on 12 February 1998, I'tidal Mohammed Qaddoura Sharshara, the widow of Mohammed Mohyddin Sharshara, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application requesting the Tribunal:

"[To order:]

a. Rescission of the Commissioner-General's decision, and (...) payment of the unpaid [16]% representing a balance of the 200% of annual salary [to which the] Applicant is entitled as a separation benefit, in US $ at the rate made available for the 84% of the respective indemnity, plus interest.

b. Payment of US$ 200 as counseling and secretarial fees."

Whereas the Respondent filed his answer on 21 June 1998;

Whereas the Applicant filed written observations on 31 July 1998;

Whereas, on 28 October 1998, the Tribunal put questions to the Respondent, to which he provided answers on 5 November 1998;

Whereas, on 10 November 1998, the Applicant submitted comments on the Respondent's submission of 5 November;

Whereas the facts in the case are as follows:

The Applicant's late husband (hereinafter the Applicant's "husband") entered the service of UNRWA on 2 February 1973, as an area staff member, as a Driver at the grade 5 level, in the Syrian Arab Republic (SAR).

On 15 April 1992, the Applicant's husband broke his wrist during the performance of his official duties. On 16 December 1992, a Medical Board examined the Applicant's husband and concluded that "the staff member is unfit for further services with the Agency as a Driver. He has developed permanent disability assessed [at] 16% of [the] whole man." On 20 December 1992, the Field Health Officer concurred in the conclusions of the Medical Board.

On 27 January 1993, the Legal Consultant, SAR, advised the Field Personnel Officer, SAR, that "the compensation due [w]as a lumpsum for impairment of 16% of the whole body". In accordance with Syrian Social Security Law No. 92 of 6 April 1959, the amount due was 67,357.62 Syrian pounds (SYP) (hereinafter the "Service Accident Compensation").

On 26 April 1993, the Field Personnel Officer advised the Applicant's husband that "the Medical Board which examined [him] on 16 December 1992 ... concluded that [he was] 'unfit for further service with the Agency', [and] therefore, [his] services [would] be terminated for health reasons under the provisions of area staff rule 109.7, para. 5(C)." Also on 26 April 1993, the Assistant Field Personnel Officer requested the Field Finance Officer to effect payment to the Applicant's husband of the Service Accident Compensation

of SYP 67,357.62 and to have him sign a Release of Liability. On 29 April 1993, a cheque in that amount was prepared for the Applicant's husband. However, he did not accept the cheque. Rather, on 13 May 1993, he wrote to the Director of UNRWA Affairs, SAR, acknowledging his receipt of a request "to sign a letter releasing the Agency of the consequences of the heart problem which I still suffer from." He enclosed a copy of his cardiologist's report and requested that the Medical Board's assessment be reviewed or that a new Medical Board be convened to include a cardiologist.

On 18 July 1993, the Applicant's husband lodged an appeal with the Joint Appeals Board (JAB), requesting a reexamination of the percentage of his permanent disability determined by the Medical Board. He further requested payment of his Separation Benefits in US dollars at the rate of exchange on the date of his accident rather than on the date of his separation from service.

The Applicant's husband separated from service on 10 October 1993. On 15 February 1994, the Field Administration Officer acknowledged his receipt of letters from the Applicant's husband disputing the Agency's determination of his disability percentage. The Field Administration Officer noted that the Applicant's husband had refused to sign a Release of Liability, the condition placed on the payment of the Service Accident Compensation, in accordance with personnel directive A/6, Part Three, paragraph 9.

After the Applicant's husband died, in May 1994, his widow continued his appeal.

In September 1994, the Applicant requested and received payment of her husband's Separation Benefits, converted from Syrian pounds into US dollars using UNRWA's Operational Rate of Exchange. These payments included a Disability Benefit, which, pursuant to staff rule 109.7, consisted of 200 per cent of the Applicant's husband's final annual salary, less the Service Accident Compensation (SYP 67,357.62).

On 5 November 1995, the Field Administration Officer wrote to the counsel for the Applicant and advised that the Service Accident Compensation (SYP 67,357.62) was

available for collection and that the Applicant would be required to sign a receipt for this sum.

On 26 July 1996, the Tribunal issued Judgement No. 768, Sharshara. The Tribunal ruled that while it could not substitute an opinion for that of the Medical Board as to the percentage of the Applicant's husband's permanent disability, it had found that the Medical Board's procedures had denied the Applicant's husband due process. The Tribunal ordered the Respondent to pay US$5,000 to the Applicant's husband's estate. The Tribunal held that the Respondent properly used the SYP-US dollar exchange rate in effect on the date of separation for the calculation of the Applicant's husband's Separation Benefits, in accordance with the Area Staff Regulations and Rules.

On 20 November 1996, counsel for the Applicant wrote to the Field Administration Officer stating that the Applicant "relinquishes the compensation of [SYP] 67,357.62, in which case she becomes eligible for the balance of the 200 per cent of the ending salary of her husband, which is payable in the manner the 184 per cent was paid, under the terms of area staff rules 109.7.2(B) and 109.7.5(C)."

On 12 January 1997, the Field Administration Officer wrote to the Applicant and advised her that in compliance with the Tribunal's Judgement No. 768, "the Agency retenders the previously offered amount of SYP 67,357.62, and will in addition to that pay [the Applicant] an amount of 5,000 US dollars."

On 17 March 1997, counsel for the Applicant wrote to the Field Administration Officer, stating that his letter of 20 November 1996 "remained without answer or action." In response, on 27 March 1997, the Field Administration Officer sent the Applicant's counsel a copy of the letter dated 12 January 1997, that he had sent to the Applicant.

On 31 March 1997, counsel for the Applicant wrote to the Field Administration Officer, advising him that the Applicant relinquished the "disability benefit" and claimed the "balance of the Separation Benefits in the currency the major part of the indemnity was paid plus interest." He further stated that these requests were "irrelevant to Judgement No. 768 [or the] pleas of the case."

On 17 April 1997, the Applicant lodged an appeal with the Joint Appeals Board (JAB).

The JAB adopted its report on 7 October 1997. Its evaluation and recommendation read as follows:

> "5. In its deliberations, the Board dwelt on the preliminary issue of receivability and declared the case not receivable based on the fact that there was a clear non-observance of the procedures for submitting appeals to the Joint Appeals Board.
>
> **III. RECOMMENDATION**
>
> 6. In view of the foregoing, and without prejudice to any further oral or written submissions ..., the Board unanimously makes its recommendation to dismiss the case."

On 3 November 1997, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed her as follows:

> "... I have carefully reviewed the Board's report.
>
> The Board declared your appeal not to be receivable because there was a clear non-observance of the procedures for submitting appeals to the Board. Accordingly, it recommended that the appeal be dismissed. I agree with the Board's conclusion and recommendation. Your appeal is dismissed."

On 12 February 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The appeal is receivable because the case remained active until Judgement No. 768 was rendered.

2. The Applicant requested review of the administrative decision not to pay the Applicant the full 200 per cent of her husband's salary as Disability Benefit, by letter from her counsel to the Field Administration Officer, dated 17 March 1997, a copy of which was also sent to the Commissioner-General.

3. The Applicant's husband was entitled to received 200 per cent of his final annual salary upon separation, but the Respondent paid less than that amount by paying part of that compensation in Syrian pounds, rather than in US dollars.

Whereas the Respondent's principal contentions are:

1. The application is not receivable by the Tribunal, because administrative review was not sought and because the appeal was not submitted in time.

2. Service Accident Compensation is payable in Syrian pounds.

3. The Applicant's argument that the Respondent under-compensated her was not raised before the JAB and thus cannot be considered by the Tribunal.

The Tribunal, having deliberated from 3 to 20 November 1998, now pronounces the following judgement:

I. The Applicant seeks rescission of the decision to pay the Applicant compensation for a service-incurred injury (hereinafter referred to as the "Service Accident Compensation") in Syrian pounds (SYP) rather than in US dollars. The Service Accident Compensation was assessed by a medical board for an injury suffered by the Applicant's late husband (hereinafter the Applicant's "husband") in the amount of SYP 67,357.62, which represented a 16 per cent loss of function of the whole person. The Applicant asserts that she rejected the profferred payment of her husband's Service Accident Compensation because the Respondent insisted on paying that benefit in Syrian pounds, rather than in the same currency that her

husband's termination indemnity was paid, i.e., in US dollars. The termination indemnity, in this case, included a "Disability Benefit", which, in accordance with area staff rule 109.7, paragraph 5(c), was equal to 200 per cent of the Applicant's husband annual salary, "reduced by the amount of [the Service Accident Compensation]". Under that provision, "the staff member's entitlement ... shall consist only of such part of the disability benefit as remains after this reduction." The Applicant argues that, having renounced that Service Accident Compensation, she should have received a full termination indemnity, namely 200 per cent of her husband's annual salary, payable in full in US dollars, and that no reduction should have been made for the Service Accident Compensation because it had not been paid.

II. The first issue in this case is whether the appeal was receivable by the Joint Appeals Board (JAB). The JAB declared the appeal non-receivable, vaguely referring to the Applicant's "clear non-observance of the procedures for submitting appeals to the [JAB]". That conclusion may have been based on the Respondent's arguments that the Applicant's appeal was time-barred and that the Applicant's husband never requested administrative review of the contested decision before the Applicant lodged an appeal with the JAB. The Respondent accepted the conclusions of the JAB and dismissed the appeal. The Respondent continues to maintain his position that the appeal was non-receivable by the JAB and thus cannot be considered by the Tribunal.

III. The Tribunal finds that the issue of whether the Service Accident Compensation is payable in Syrian pounds arose in 1993, either at the time that payment was first tendered to the Applicant's husband, or at the latest, when the Applicant's husband received his termination indemnity. The Tribunal finds, however, that the pleas in this case are not time-barred to the extent that they flow from an apparent confusion as to the proper implementation of the Tribunal's order in Judgement No. 768, Sharshara (1996). The Tribunal therefore notes that the Applicant should not have appealed these issues to the JAB, but rather should have

addressed herself in the first instance to the Tribunal, in order to request interpretation of Judgement No. 768.

Under these circumstances, the Tribunal will treat this Application as a request for interpretation of Judgement No. 768. (Cf. Judgements No. 893, Thiam (1998); No. 366, Sabatier (1986); No. 61, Crawford et al. (1955)). The Tribunal will address the merits of the application, as they require no more than a clarification of the terms of that prior judgement.

IV. In her prior application, the Applicant claimed that the assessment of Service Accident Compensation made by the Medical Board was erroneous, because her husband was entitled to a finding of 100 per cent loss of function of the whole person and because the Board's procedure was flawed. She also requested that the US dollar/Syrian pound exchange rate prevailing at the time of her husband's service-incurred injury be used to calculate the termination benefits to which her husband had been entitled. The Tribunal awarded damages in the amount of US$5,000.00 to the estate of the Applicant's husband, for flaws in the Medical Board's procedure, but rejected all other pleas. The Tribunal made a specific determination that the termination benefits were properly paid in US dollars at the exchange rate in effect on the date of termination, not on the date of the accident.

V. Although the Tribunal acknowledged that termination benefits are payable in US dollars, and although it awarded damages in US dollars for flaws in the procedure for determining the Service Accident Compensation, it made no finding that the Service Accident Compensation itself was to be paid in US dollars. The Tribunal notes that under area staff rule 106.4, the amount of compensation for injury attributable to service is determined by reference to worker's compensation and labour law in the Syrian Arab Republic, and is based on the salary, paid in Syrian pounds, of the injured staff member. Indeed, the Applicant does not argue that the Service Accident Compensation is payable in US dollars. Rather, she argues that because she rejected the Service Accident Compensation, the Respondent cannot

justify subtracting that amount from the termination indemnity. She claims that the Respondent therefore must pay that full indemnity, i.e. 200 per cent of her husband's salary, in US dollars, without deducting SYP 67,357.62. The Tribunal finds that the Applicant cannot reject the Service Accident Compensation in the hope of obtaining a larger termination indemnity, based on a more favourable US dollar-Syrian pound exchange rate.

VI. For the foregoing reasons, the Tribunal:

1. Orders the Respondent to pay to the Applicant the Service Accident Compensation owed to her late husband, in the amount of SYP 67,357.62; and

2. Rejects all other pleas.

(Signatures)

Hubert THIERRY
President

Julio BARBOZA
Member

Victor YENYI OLUNGU
Member

New York, 20 November 1998

R. Maria VICIEN MILBURN
Executive Secretary